(1955) 07 GAU CK 0002

In the Gauhati High Court

Case No : M.A. (F) 1 of 1953

Mehar Sheik APPELLANT

Vs

Hamida Khatun RESPONDENT

Date of Decision : 05-07-1955

Acts Referred:
Assam Adhiars Protection and Regulation Act, 1948 — Section 2(8), 5, 9, 9(8)

Citation : AIR 1957 Guw 101

Hon'ble Judges : Sarjoo Prasad, C.J;Ram Labhaya, J

Bench : Division Bench

Advocate : G.K. Deb, for the Appellant; S.K. Ghose and P. Chaudhury, for the Respondent

Judgement

Sarjoo Prosad, C.J.—This is an appeal u/s 9 of the Assam Adhiars Protection and Regulation Act, 1948 (Assam Act XII of 1948). It is directed against an order dated 25-11-1952 passed by Mr. B. M. Dam, Additional Deputy Commissioner of Goalpara.

2. It arises out of an application u/s 5 of the said Act filed by the Respondent for eviction of the Appellant from certain lands on the grounds mentioned in Clauses (ii) and (iii) of S. 5. It was alleged that the Appellant had been misusing the land so as to render it unlit for cultivation and that he had not paid the paddy rent or the share of the adhiar crops to the Respondent. ....

It appears that Mehar Sheik, the Appellant had executed in favour of the Respondent a registered adhinama on the 11th June 1945 in respect of, 25 bighas of land. Under the document in question he; undertook to pay her, the share of the adhiar crops and in fact in 1352, 1353 and 1354 B.S. the Appellant did divide the crops with the Respondent but failed to deliver her share of the crops thereafter, In addition, it was all cued that he had dug a pit of about 40 cubits x 20 cubits x 4 cubits on the land without the knowledge of the Respondent or her consent and constructed six or seven houses on the land thereby making it unfit for the purpose of cultivation. The Appellant, denied that ho was an adhiar or that as such he delivered any crops to the Respondent.

On the contrary the Appellant took up the position that he was a chulnni (occupancy) tenant under the Respondent, lie also denied bavin; executed the Adhinama set up by the Respondent.

3. On the above grounds, the Respondent filed an application u/s 5 for eviction of the Appellant. Some of the facts do not appear to have been disputed. The Appellant''s lather Mehar Sheik was a tenant under the Respondent in respect of this land.

After the death of Mehar Sheik the Respondent instituted a suit for rent against the Appellant and the other heirs and obtained a decree in execution of which the Respondent purchased the land in question on 23rd November, 1942 and obtained delivery of possession on the 8th May, 1945. Thereafter the Appellant obtained possession as an Adhiar under a registered adhinama.

4. The said application came to be heard eventually by the Additional Deputy Commissioner who I must say in a well dismissed order disposed of the matter. The officer found that the allegations of the Appellant were incorrect; that he had executed the registered adhinama in favour of the Respondent and that he was in possession of the land under the adhinama in question.

He also found that the statement of the Respondent that the land had been misused and rendered unfit for cultivation by digging pits and erection of houses was correct. It was also held by the officer that the Appellant had divided the crops in previous years but refused to do so after 1354 B.S. and on these grounds the Respondent was justified in filing on application u/s 5 of, the Assam Adhiars Protection and Regulation Act, 1948 for eviction of the Appellant. On these findings, the Additional Deputy Commissioner passed the order in question which is challenged before us.

5. At the outset, a question has been raised that the Additional Deputy Commissioner had no a jurisdiction to dispose of the application because, "the said officer was not a Revenue Officer within, "the meaning of Section 2, Sub-section (8) of the Act. Sub-section (8) defines a "Revenue Officer" thus;

"Revenue Officer" means any officer appointed by the Provincial Government by name or by virtue of his office to discharge any of the functions of a Revenue Officer under this Act and includes the Deputy Commissioner of a District and the Subdivisional Officer of a Subdivision." The section therefore provides that the Deputy Commissioner and the Sub divisional Officer of a Subdivision are ex-officio Revenue Officers, but there may be revenue officers appointed by the Provincial Government by name or by virtue of their office to discharge the functions of a Revenue Officer under the Act. Now the Additional Deputy Commissioner was not an ex-officio Revenue Officer as provided by the law.

The question then arises whether the Provincial Government had by name or by virtue of his office appointed him to discharge the functions: of a revenue officer under the Act. We called for a report from the Deputy Commissioner on the point and the Deputy Commissioner concedes that Mr. Dam, the Additional Deputy Commissioner was not a Revenue Officer as provided by Section 2 (8) A of the Act on the date of the order in question, nor was there any notification of Government authorising him to act as Deputy Commissioner under the rules on the above date. This being so, Mr. Dam, had no jurisdiction to deal with the application u/s 5 of the Act which could be disposed of only by a "Revenue Officer" as required by the Act. The application itself had been presented to the Deputy Commissioner but rest it appears, under some misapprehension of the powers of the . Additional Deputy Commissioner, it was placed for hearing before him; and although the order passed by the learned officer is a well considered order discussing very lucidly the points, involved and the evidence given by the parties, I regret very much that I have to interfere with the order on account of the fact that it was obviously without jurisdiction.

The Deputy Commissioner in his report appears to suggest that at no stage any serious objection was taken to the competence of the officer to dispose of the application in question but the 1 omission to do so will not confer any jurisdiction on the officer which he did not possess under the law and as the matter affects his jurisdiction, consent or otherwise would be immaterial.

6. Mr. Ghose on behalf of the Respondent a has urged that the appeal itself is incompetent because if Mr. Dam passed the order in question J a Revenue Officer, an appeal lay under the rules to the Deputy Commissioner and the appeal not having been preferred before him, the present a appeal is incompetent. In the alternative he suggests that even, he purported to pass the order in question as a Deputy Commissioner, this Court in revision should not interfere. The order does not clearly specifying what capacity Mr. Dam purported to act. In the copy of the order at one stage Mr. Dam has remarked that as a Revenue Officer, he was not in 9 clined to accept certain pleas raised by the appellant but at the end of the judgment he signs the 9 order in question as ''Additional Deputy Commisssioner."

It is contended on behalf of the Appellant by Mr. Deb that as he purported to act as Deputy Commissioner, and as such as a "Revenue Officer", Although erroneously, an appeal lay to this Court within Section 9 of the Act and that in any event, this order was open to revision by this Court, the order being clearly without jurisdiction the order could not stand.

We have already held that the order passed by Mr. Dam is clearly without jurisdiction as there Is nothing to indicate that on the date when he passed the order in question he had the powers of a ''Revenue Officer'' vested in him by Government as required by Section 9 (8) of the Act, In the circumstances we have no option but to set aside the order and to direct that the application filed by the Respondent u/s 5 of the Act should be disposed of by the Deputy Commissioner or by Some other officer competent to hear the same. There will be no order as to the costs of this appeal.

Ram Labhaya, J.

7. I agree.